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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

ORIGINAL

In the Matter of)
)
AMENDMENT OF THE COMMISSION'S RULES)
TO PERMIT FLEXIBLE SERVICE OFFERINGS)
IN THE COMMERCIAL MOBILE RADIO SERVICES)

WT Docket No. 96-6

To: The Commission

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COMMENTS

Alliance of LEC-Affiliated Wireless Services Providers ("Alliance"), by its attorney, hereby submits comments in the above-captioned matter in response to a Notice of Proposed Rule Making released by the Commission on January 25, 1996 (FCC 96-17) (hereafter the "NPRM").^{1/}

Introduction

1. Each Alliance member is licensed by the Commission to provide cellular service in one or more Rural Service Areas or in a small metropolitan market. Members of the Alliance are owned by local exchange carriers ("LECs") or affiliates of LECs.

2. By these Comments, the Alliance supports the Commission's proposal to allow broadband Commercial Mobile Radio Service ("CMRS") providers to offer fixed wireless local loop service. The Alliance also requests that flexibility be afforded to broadband

^{1/} The Alliance members are listed at Attachment A to these Comments.

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CMRS providers to offer other forms of fixed services in addition to their mobile service offerings.

**Parity in Regulation of CMRS Licensees
Requires Uniformity of CMRS Rules
and Policies Concerning Services to Fixed Locations**

3. The Commission's Rules regulate various forms of CMRS under an assortment of rules contained in Part 22 (including cellular as well as Basic Exchange Telecommunications Radio Service or "BETRS"), Part 24 (including broadband Personal Communications Services or "PCS") and Part 90 (including Specialized Mobile Radio or "SMR"). Part 20 of the Rules concerns all forms of CMRS. As the Commission may observe the subject of fixed services is not uniformly treated among the various rule parts.

A. State Certification Should Not be a Barrier to Fixed Service Offerings

4. When the Commission adopted its "rewrite" of Part 22 in 1994, there was no substantive change in the rule (currently Section 22.323) which provides for "incidental communications services" which may include service to fixed locations. At the time, the Commission offered comments in explanation of its rule changes as part of the Report and Order, In the Matter of Revision of Part 22 of the Commission's Rules, CC Docket 92-115, 9 FCC Rcd 6513 (1994) (hereafter the "Part 22 Rewrite Order"). One comment which bears directly upon the instant proceeding appeared in Appendix A as part of a "Detailed Discussion of Part 22 Rule

Amendments." In the process of explaining the new Section 22.901 titled "Cellular service requirements and limitations," the Commission cited a previous rule making notice in the same proceeding for the point that

[c]arriers desiring to provide an incidental fixed service must comply with state certification requirements.

See, Part 22 Rewrite Order, Appendix A, Page A-40. That statement now needs clarification or modification, as to both its applicability to Part 22 licensees as well as to PCS licensees regulated by Part 24 and SMR licensees regulated by Part 90 of the Rules. The Alliance submits that Commission rules and policy should apply uniformly to all broadband CMRS licensees on the matter of any state certification requirements which may impede fixed service offerings. There are sound policy reasons why the Commission may now decide to preempt, or recognize that it already has preempted, state certification requirements in this area.^{2/ 3/}

B. Regulatory Parity Warrants Consistent Rules and Policies for All CMRS Licensees

5. As the Commission reviews the subject of fixed services by CMRS providers, cellular licensees should not be held to a

^{2/} See, for example, the NPRM in this proceeding at paragraph 20, and the Part 22 Rewrite Order at Appendix A, p. A-39 in the discussion of preemption under Section 22.901.

^{3/} Surprisingly, at least one state has decided to allow PCS but not cellular licensees to use radio facilities to meet build-out requirements pertaining to a certificate of operating authority. See Attachment 2 hereto, which is an excerpt from the Public Utility Regulatory Act of 1995, Public Utility Commission of Texas, at Section 3.2531(d).

different standard than PCS and other CMRS licensees. The NPRM refers to an interpretation of PCS rules which "...permit PCS licensees to provide any fixed service that is ancillary to their mobile operations."^{4/} This is not unlike the concept expressed in Part 22 of the rules pertaining to cellular services.

6. But the Bureau Letter continued with an interpretation that the definition of PCS is "sufficiently inclusive to accommodate a wide range of services and technologies, including new and creative applications." In further explanation, the Bureau Letter stated that "the staff believes that PCS includes fixed services ancillary to or in support of the provision of a wide range of portable and mobile wireless communications services to individuals and businesses." Several examples of permissible fixed services were cited, including "facilities linking users' premises to PCS networks."

7. The Alliance is aware of no comparable interpretation of Part 22 rules which would provide guidance to cellular licensees. Alliance members envision opportunities of the type described by

^{4/} NPRM, para. 4, fn. omitted. The associated footnote cited a letter ruling of the Wireless Telecommunications Bureau ("Bureau Letter") which interpreted the PCS rules. That ruling was limited to PCS licensees but the Commission should take this opportunity to articulate a consistent policy applicable to PCS, cellular and other CMRS licensees. Significantly, there was no mention in the Bureau Letter of state certification requirements as a possible impediment to fixed service offerings.

the Bureau Letter to offer service that would link users' premises to their cellular networks. This proceeding offers a timely opportunity for the Commission to adopt rules and policies which afford all CMRS licensees the same opportunities to provide fixed services, consistent with principles of regulatory parity for all CMRS providers.

**Wireless Service to Fixed Locations Provides
Cost and Quality Benefits to Some Rural Area Residents**

8. Alliance members are aware of opportunities to offer wireless fixed services where landline service is either uneconomical or of inferior quality. The Commission may take official notice of the fact that LECs sometimes assess substantial construction costs to a new customer in a rural area. In those instances local loop service from a CMRS provider may be an expedient and economical alternative, and in some cases present the only practical means for a customer to obtain telephone service.^{5/} In other situations, landline service of the LEC may be inferior in quality to service from a CMRS licensee. There remain areas of the country where private-line landline service is not offered, and only "2-party" or "4-party" shared service is available from the

^{5/} One of the Alliance members is aware of rural areas in Linn and Logan Counties in Kansas, for example, where LECs have suggested to prospective customers that the initial construction costs to reach a location may make it advantageous to seek wireless service from a CMRS provider as a more efficient alternative. Similar circumstances in the state of Alaska are known to another Alliance member.

LEC. Wireless service, especially digital wireless service, would offer improved security and availability of telephone service to the shared system customers.

9. There are clear public interest benefits to be derived from allowing CMRS licensees to offer fixed local loop services. The benefits exist either through a competitive offering to the LEC service, or where geographic limitations render landline service an impracticality. A customer may find benefit to a unique toll-free calling area offered by a CMRS provider which has designed its network differently from the LEC's network. Likewise, customers may find benefits from a combination of fixed and mobile services that more closely match a service need. Customers' choices are not driven entirely by simple economic comparisons since safety of life and property may present overriding concerns that would lead to selection of a CMRS service for fixed and/or mobile use. The Commission should allow customers to make such choices, not preclude customer choices by arbitrary restrictions on the type of service available from CMRS providers.

10. Fixed service applications other than local loop service will develop where efficiencies can be realized. The NPRM noted several possible applications, including remote monitoring, Internet access, credit card verification and electronic funds transfers, where CMRS to fixed locations may be practical. Alliance members request flexibility under the Commission's rules

to offer any such services which become feasible in their markets. The ability to offer a menu of services is welcomed by Alliance members.

Conclusion

11. The Alliance members request clarification or modification of the Commission's rules to allow flexibility for all CMRS licensees to offer fixed location services on a complementary, non-interfering basis with their mobile service offerings. In so doing, the Commission should affirm the principle of regulatory parity among CMRS providers and allow fixed service offerings without need for state regulatory certifications.

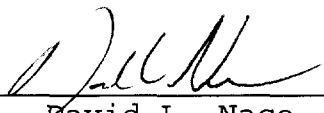
12. CMRS fixed service offerings can be expected to benefit the public through the introduction of new services and competitive services in the marketplace. It is apparent that landline facilities are not always the most cost effective means to provide service to fixed points, and in some cases landline service is totally impractical. This proceeding offers the Commission a timely opportunity to discard needlessly restrictive conditions on

CMRS providers, and to allow wireless technology to serve the public need.

Respectfully submitted,

**ALLIANCE OF LEC-AFFILIATED
WIRELESS SERVICES PROVIDERS**

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ALLIANCE OF LEC-AFFILIATED WIRELESS SERVICES PROVIDERS

LIBERTY CELLULAR, INC. d/b/a KANSAS CELLULAR
(Kansas RSAs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 15)

BRISTOL BAY CELLULAR PARTNERSHIP (Alaska RSA 2, Market 316-B-2)

ENID MSA PARTNERSHIP (Enid, Oklahoma MSA, Market 302-B-1)

OKLAHOMA RSA 2 PARTNERSHIP (Oklahoma RSA 2, Market 597-B-1)

OKLAHOMA RSA 5 EAST PARTNERSHIP (Oklahoma RSA 5, Market 600-B-2)

OKLAHOMA RSA 6 PARTNERSHIP (Oklahoma RSA 6, Market 601-B-1)

ETEX CELLULAR CO., INC. (Texas RSA 7, Market 658-B-4)

PUBLIC UTILITY REGULATORY ACT of 1995

Article 1446c-0

with all amendments as of September 1, 1995

**PUBLIC UTILITY COMMISSION
OF TEXAS**

- (1) an extension into territory contiguous to that already served by it and not receiving similar service from another telecommunications utility and not within the certificated area of another telecommunications utility;
 - (2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity, certificate of operating authority, or service provider certificate of operating authority;
 - (3) operation, extension, or service in progress on September 1, 1975; or
 - (4) interexchange telecommunications service, non-switched private line service, shared tenant service, specialized communications common carrier service, commercial mobile service, or operator service as defined by Section 3.052(a) of this Act.
- (b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting telecommunications utility services from existing facilities to customers of retail utility service. [Sec. 51]

Sec. 3.253. APPLICATION; MAPS; EVIDENCE OF CONSENT.

- (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.
- (b) On or before 90 days after September 1, 1975, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for transmission and distribution of its services.
- (c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority. [Sec. 52]

Sec. 3.2531. CERTIFICATE OF OPERATING AUTHORITY.

- (a) In lieu of applying for a certificate of convenience and necessity, an applicant may apply for a certificate of operating authority.
- (b) An application for a certificate of operating authority shall specify whether the applicant is seeking a facilities based certificate of operating authority under this section or a service provider certificate of operating authority under Section 3.2532. When an application for a certificate of operating authority or service provider certificate of operating authority is filed, the commission shall give notice of the application to interested parties and, if requested, shall fix a time and place for a hearing and give

notice of the hearing. Any person interested in the application may intervene at the hearing.

- (c) If seeking a facilities based certificate of operating authority, the applicant must include in the application a proposed build-out plan demonstrating how the applicant will deploy its facilities throughout the geographic area of its certificated service area over a six-year period. The commission may issue rules for a holder of a certificate of operating authority with respect to the time within which the holder must be able to serve customers, except that a holder must serve customers within a build-out area within 30 days of the date of a customer request for service. The commission may not require a holder to place "drop" facilities on every customer's premises or to activate fiber optic facilities in advance of customer request as part of the build-out requirements. The plan required by this subsection must meet the following conditions:
- (1) 10 percent of the area to be served must be served with facilities other than the facilities of the incumbent local exchange company by the end of the first year;
 - (2) 50 percent of the area to be served must be served with facilities other than the facilities of the incumbent local exchange company by the end of the third year; and
 - (3) all of the area to be served must be served with facilities other than the facilities of the incumbent local exchange company by the end of the sixth year.
- (d) The build-out plan may permit not more than 40 percent of the applicant's service area to be served by resale of the incumbent local exchange company's facilities under the tariff required to be approved in Section 3.453 of this Act, except that during the six years immediately following the grant, a holder of a certificate of operating authority may extend its service by resale only within the area it is obligated to serve under the build-out plan approved by the commission and to the distant premises of one of its multi-premises customers beyond that build-out area but within its certificated service area. The 40-percent resale limitation applies to incumbent local exchange facilities resold by a holder of a certificate of operating authority as part of the provision of local exchange telephone service, regardless of whether the facilities are purchased directly by the certificate of operating authority holder from the incumbent local exchange company or purchased by an intermediary carrier from the incumbent local exchange company and then provided to the certificate of operating authority holder for resale.
- In no event may an applicant use commercial mobile service to meet the build-out requirement imposed by this section, but an applicant may use PCS or other wireless technology licensed or allocated by the Federal Communications Commission after January 1, 1995, to meet the build-out requirement.
- (e) A certificate of operating authority shall be granted within 60 days after the date of the application on a nondiscriminatory basis after consideration by the commission of factors such as the technical and financial qualifications of the applicant and the applicant's ability to meet the commission's quality of service requirements. The